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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/755,218	01/12/2004	Jeffrey Berichon	078297/000001	1889
23380 7590 01/07/2011 TUCKER ELLIS & WEST LLP 1150 HUNTINGTON BUILDING 925 EUCLID AVENUE CLEVELAND, OH 44115-1414				
EXAMINER				
ROJAS, HAJIME S				
ART UNIT		PAPER NUMBER		
3627				
NOTIFICATION DATE		DELIVERY MODE		
01/07/2011		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@tuckerellis.com

# Office Action Summary

## Application No.

10/755,218

## Applicant(s)

BERICHON ET AL.

## Examiner

HAJIME ROJAS

## Art Unit

3627

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,8-11, 18-21, 28-31 and 39-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,8-11, 18-21, 28-31 and 39-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

The following is a Final Office action in response to communications received October 25, 2010.

Claims 1, 8-11, 18-21, 28-31, 39-44 are pending and addressed below.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1, 8-11, 18-21, 28-31, 39-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Joyce et al. (US 2004/0153379 A1, hereinafter Joyce) in view of Waddington et al. (US 2002/0010661, hereinafter Waddington).**

As per claims 1, 8-11, 18-21, 28-31, 39-44, Joyce shows all the limitations as claimed except for capturing modes.

Joyce discloses consolidating, shipping and distributing items comprising multiple orders to multiple customers (Abstract), wherein the sources and destinations of the orders are different and wherein the orders are consolidated at a distribution center (Figure 1. See also [paragraph][0049]-[0050]). Joyce also discloses managing the

distribution of items either by scanning or manually input [0052]. Waddington teaches a delivery device which includes receiving user selections through capturing modes for use in a distribution system (Figure 7, [0089], [0147]. See also Figures 36-39).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention as disclosed by Joyce and include the delivery device as taught by Waddington in order to automate as well as reduce manual errors in the invention as disclosed by Joyce.

Please Note: A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

### ***Response to Arguments***

In response to Applicant's amendment and arguments directed to rejections under 35 USC § 112 first paragraph, Examiner withdraws rejection.

In the remarks, Applicant argues that "the present application, the items are received from a plurality of unique shipper sources, they are sorted and consolidated by a single pool distributor, then shipped to a plurality of associated destinations as pooled groups of items. Conversely, the system of Joyce is an order picking system which simply aggregates the orders of individual customers into a single bundle for individual distribution to single customers, one at a time.

Once these individual orders are picked and packed, Joyce describes a distribution center direct model, not a pooled distribution system as claimed. As shown in Figure 2 of Joyce, goods from multiple sources are assembled at a distribution center wherein individual customers may collect the bundled aggregated order.

It is described at paragraphs [0016] - [0023] of Joyce, for example, the each customer is associated with a centralized distribution center whereat the customers may retrieve their orders and for purposes of reducing the number of delivery points. Joyce is accordingly about shipping single orders to a single location.

In contradistinction to Joyce, the systems and methods of the present application consolidate orders/shipments from multiple shipper sources for delivery as pooled groups of items to a plurality of associate destinations.”

In response, Joyce does disclose a pooled distribution wherein items are received at a Distribution Center ([0019], “DC”) from a plurality of unique shipper sources (Joyce paragraph [0019], third party inventory, vendors, etc.), they are sorted and consolidated by a single pool distributor ([0024][0025], orders sorted and consolidated by the DC) then shipped to a plurality of associated destinations as pooled groups of items ([0026] recites: “The consolidated package is shipped to an authorized outlet via a shipping service” and [0054] “Consolidated packages 122 are shipped from the DC 108 and via a commercial shipping service 124 to one ore more authorized outlets 126”). Thus, Joyce does disclose a pooled distribution model and the combination of Joyce and Waddington render the claims obvious as stated above.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HAJIME ROJAS whose telephone number is (571)270-5491. The examiner can normally be reached on EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Florian Zeender can be reached on (571)272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status

information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/HAJIME ROJAS/

Examiner, Art Unit 3627

/F. Ryan Zeender/

Supervisory Patent Examiner, Art Unit 3627